

STATE AGENCIES AND THE COLLECTION OF W-9s

The Office of Management and Budget updated Fiscal Policy 110 as of August 1, 2007. This policy concerns IRS Form 1099, backup withholding, and the requirement of a W-9 for all vendors in the PeopleSoft vendor database. It is this last issue that will be addressed here.

The policy states, “A W-9 is required for all non-state employee vendors and is to be filed with Vendor Registry.” This is becoming an industry standard practice, as states such as Montana, Oklahoma, and others are realizing the financial impact that non compliance of IRS rules could bring upon the State.

So how is this accomplished? Vendor Registry has established procedures that require an IRS Form W-9, or a substitute W-9 pre-approved by Vendor Registry, to be **collected by the agencies** prior to the request for new vendors. Since this is quite a different procedure for agency fiscal staff, it will not be enforced until January 1, 2008. However, from now until January 1, Vendor Registry will start preparing agencies for this change by asking agencies to request forms W-9 from the new vendors at the time they send the payment.

Why are state agencies being asked to collect these forms? Because the agencies – not OMB or Vendor Registry – have control of the payment process. If businesses or individuals wish to do business with the State of North Dakota, it is not unreasonable to require that they complete a form validating their legal information.

The biggest misconception regarding forms W-9 is that the receipt of a W-9 implies 1099 reporting will be made on the vendor.

- While it is true that a W-9 must be on file for every 1099 that is issued by the State, the W-9 form itself merely verifies the vendor/payee's legal name, address, taxpayer identification number, and type of organization (individual, partnership, corporation, etc.). Any false information given by the vendor on a W-9 becomes their liability, not the State's.
- Payments to most corporations are not reportable on a 1099, but how do you identify the corporations from the partnerships, unincorporated nonprofits, sole proprietorships, etc.? By submitting a W-9, the vendor can verify their legal tax organization to the State.
- Agencies often request that a vendor be set up under a business name. When Vendor Registry contacts the business for a W-9 or vendor registration form, it is discovered that the business is actually a sole proprietorship, and all payments need to be reported under an individual's name and social security number. Without that W-9, the State could be reporting payments on the correct taxpayer ID number, but the wrong name. The state agency paying that vendor may be liable for any incorrect 1099 reported to the IRS.
- Once a vendor is set up on the PeopleSoft database, it becomes “global” – this means that any state agency or institution of the University System can also use this vendor. An agency may request that a new vendor be set up for a non-reportable expense, but the next user may need to pay that vendor for reportable services. It is Vendor Registry's responsibility to make sure that the vendor is set up accurately for everyone's use – it is the paying agency's responsibility to worry about whether or not their voucher requires 1099 reporting.

PROCEDURES FOR COLLECTING FORMS W-9/W-8 FROM VENDORS

Now that the explanation of why the forms W-9 are needed up front, let us move on to how to collect them.

Vendors that do not require a W-9 (exemptions):

- All federal (U.S.) agencies
- State and local governments in all states
- Banks, Credit Unions, or similar financial institutions
- Conferences
- Tribal Governments
- **One-Time Vendors with payments under \$600** (more on this below)

Vendors that require a W-9 – all “global” vendors that are not listed above. This includes, but is not limited to:

Ambulance Services	General Partnerships	Limited Liability Companies –
Associations	<i>*Grant-Emergency Shelter</i>	All Types
Boards and Councils	<i>*Grant-Foster Care</i>	Quick Response Units
Board and Council Members	<i>*Grant-Foster Grandparent</i>	Rescue Units
Consortiums	<i>*Grant-Independent Living</i>	Sole Proprietors
Cooperatives	<i>*Grant-TANF</i>	Trusts
Corporations	<i>*Grant-Unaccompanied</i>	Unincorporated Non-Profits
<i>*Contractual Vendors</i>	<i>Minors</i>	
Employees set up as regular vendors	Incorporated Non-Profits	
	Individuals	

**Please encourage managers to include a W-9 with the rest of their grant or contract paperwork.*

REFER TO THIS WEB PAGE FOR SELECTION OF THE PROPER FORM FOR THE VENDOR TO COMPLETE: [Forms for Vendors/Payees](#). See page three regarding foreign vendors.

Steps for collecting W-9 forms from vendors/payees:

1. Give appropriate form to vendor/payee for completion.
2. The vendor/payee should return the form to the requesting agency, signed and dated.
3. The agency should complete a Fax cover sheet at <http://www.nd.gov/spo/connectnd/docs/fax-cover-sheet.pdf> to fax with the completed form to Vendor Registry on their confidential fax line: **701-328-0108**.
4. Send an email to spovendor@nd.gov with the name of the vendor(s) the agency needs set up. Be sure to state that a fax is on the way with the proper forms for the vendor(s). This would be a good time to stipulate any differences between the payee name on the check versus the legal name on the W-9 or application.

ONE-TIME VENDORS

1. A vendor is either considered one-time or global. All global vendors (other than the exemptions) need a W-9 on file, whether or not they are reportable on a 1099.
2. An agency may request a new vendor for a one-time payment only. If so, Vendor Registry personnel will ask the agency what the amount of the payment will be.
 - a. If the payment is more than \$599.99, a W-9 is required – it does not matter whether or not the payment will be reported on a 1099.
 - b. If the payment is less than \$600, no W-9 is needed for the initial set up.
 - One-time vendors go inactive after the voucher is processed. This vendor will not be reactivated for future payments without a W-9 collected up front, regardless of dollar amount.
 - Vendor Registry will mark the vendor to prevent it from being used again without proper paperwork.
 - c. **Exceptions:** Any vendor payment that qualifies for 1099-G or 1099-S reporting still needs a W-9, as the \$600.00 limit does not apply.

FOREIGN VENDORS

A W-8 must be collected from all foreign vendors before payment is made. The W-8 certifies the foreign status of a vendor and makes the vendor prove who they are. Keep in mind that a W-8 form must be collected whether:

- The payment is one-time and under \$600.00;
- The vendor is a corporation (There is no exception for foreign corporations.);
- The payment is for commodities, services, or a reimbursement.

Questions to ask foreign vendors (individual or business):

1. Do you have a store, plant, division, or office located within the U.S.?
2. Do you have a U.S. taxpayer ID?
3. Do you qualify for exemption under any treaties between the U.S. and your country?

The answers to these questions will help agencies decide which form W-8 the vendor should complete. Here are short descriptions of the forms:

- Most will complete the [W-8BEN](#). Use this form if the following do not apply.
- The [W-8ECI](#) is required when the business headquarters are foreign, but they have a plant, store, etc. physically located in the U.S. **The payee must have a U.S. taxpayer ID to complete this form.**

- Use the [W-8EXP](#) for foreign governments, foreign banks, and foreign tax-exempt organizations.
- Use the [W-8IMY](#) for foreign intermediaries, flow-through entities, etc. collecting money for a third party

More detailed explanations can be found on our web site at the following link:

<http://www.nd.gov/spo/vendor/registry/forms/foreign-vendors.html>